IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7599 of 1988

For Approval and Signature:

Hon'ble ACTING CHIEF JUSTICE MR.JN BHATT
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BAKUL TRIPATHI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7599 of 1988
MR DC RAVAL for Petitioner
MS ARCHANA C RAVAL Respondent No. 1
MR SN SHELAT for Respondent No. 2
MS KJ BRAHMBHATT for Respondent No. 3

CORAM : ACTING CHIEF JUSTICE MR.JN BHATT
and
MR.JUSTICE A.L.DAVE

Date of decision: 09/07/2003

ORAL JUDGEMENT

(Per : ACTING CHIEF JUSTICE MR.JN BHATT)

The petitioner has challenged the orders and communication at Annexure C, E and F and amended Ordinances at Annexure D-2 and D-3 as illegal, unconstitutional, without jurisdiction and of no effect whatsoever with a further prayer to treat him as continuing in service till the end of the academic term beginning in November 1988 and ending in April 1989, by filing this petition under Article 226 of the Constitution of India.

A few material facts may be stated at the outset. The petitioner's birth-date is 27.11.28 and he was to attain the age of 60 years on 27.11.88. According to the petitioner, in Commerce faculty, under Ordinance 75 terms are expressly prescribed. The first term is beginning on 15th June and ending on 20th October. From 20th October to 10th November is Winter Vacation and the second term begins on 11th November and ends on 7th April of every academic year, and from 7th April to 14th June is Summer vacation. In this context, it is stated by the petitioner that according to the well established statutory University policy, the petitioner was to retire in the middle of the second term and, therefore, should have retired at the end of the term i.e. on 7.4.1989. Somehow or the other, such right is denied by the unauthorised action of the respondent authorities and in express violation of the statutory provision.

The Executive Council of the University, respondent No.2 had framed Ordinance 172(15) prescribing the age of retirement of college teachers and providing that he will retire on the date on which he attains the age of sixty. This was made subject to the proviso that the date of superannuation shall be 10th November or 14th June of year whichever comes earlier after the teacher attains the age of sixty years.

The salary of the college teachers is paid by the State of Gujarat as a part of the grant paid to the affiliated colleges. State of Gujarat by resolution dated 9th June 1987 provided that if a teacher happens to attain the age of 60 years in the middle of the term, he will retire at the end of the term and not at the end of the vacation following the term. The petitioner has also relied on a judgment given by the Gujarat Affiliated Colleges Service Tribunal in Application No.74 of 1985 whereby it was decided that the teachers attaining the age of 60 years

in the middle of the term are entitled to retire at the end of the term notwithstanding the occasional shifting of the term which may be necessitated due to disturbances or such other reasons. In this context, it is pleaded that the clarification made by the communication was that the teacher would retire at the end of the normal vacation and not the shifted vacation.

The further plea advanced by the petitioner is that at the beginning of the then academic year, the colleges started late due to delay in completion of examination work caused by the strike of the teachers. In June 1988, the term that was supposed to begin on 15th June 1988 was delayed by more than a month. In June 1988, the Executive Council of the University was not functioning. The Vice Chancellor of the respondent No.2 University by the communication dated 14.6.88 informed all the colleges that he had amended Ordinance No.172(15) and the amended Ordinance provided that a teacher who superannuates in the midst of the vacation will retire on the last day of the month in which he attains the age of six years. Thus a major policy decision was taken by the Vice Chancellor which could only be taken by the Executive Council. It is, therefore, pleaded that the action of the Vice-Chancellor is unauthorised and usurpation of powers of the Executive Council.

The petitioner received letter dated 4.11.88 from respondent No.3 Society informing him that he would retire on 30.11.88. The respondent No.3 Society has also placed on record its appreciation of the petitioner's very valuable service for more than 35 years. Thus, according to the petitioner he is denied the benefit of retiring at the end of the term as per the Executive Council's own policy decision and the statutory Ordinance. The petitioner further submitted that under section 20(1)(xxxiii) read with sections 30 and 31, it is the exclusive power of the Executive Council of the University to prescribe proper conditions of employment of the teaching and non-teaching staff of the affiliated colleges. The policy of retiring teachers on attaining the age of retirement in the middle of term as prescribed by Ordinance 75 was laid down by the Executive Council by its Ordinance 172(15). The Vice Chancellor of the respondent University, therefore, has no power or authority in law whatsoever to amend the statutory Ordinance enacted by the Executive Council in exercise of its statutory power. It is, therefore, the case of the petitioner that the amendment to the statutory Ordinance 172(15) as per Annexure D-2 and D-3 is unjust, unreasonable and without jurisdiction.

It may be mentioned, at this stage, that pursuant to the interim order granted by this Court in favour of the petitioner in Civil Application No.735 of 1989, amendment came to be made in the petition, which has not been controverted. It could very well be seen from the amended pleading that after 30th November 1988, the petitioner had continued in service as per the orders of this Court passed on 30th November 1988 and 3rd March, 1989. It is, therefore, the case of the petitioner that he has rendered service for the period beginning from 1st December 1988 till the end of the term i.e. 7th April 1989. He has, therefore, claimed salary for the said period on the principle of quantum meruit. It is specifically averred in the amended pleading that no other person was appointed on the post of the petitioner and that he has worked as such on the said post and the students and the institution, both, have benefitted from the service of the petitioner. Therefore, he is entitled to salary for the period from 1st December 1988 to 7th April 1989 and other consequential benefits.

The Registrar of the respondent No.2 University has filed affidavit in reply controverting and challenging the averments made by the petitioner in the petition. He has contended that the petitioner had no right to continue and there is uniform age of superannuation for all teachers, irrespective of whether he is a prominent literary figure or not and when Ordinance 172(15) was framed in 1984, the main object was to see that no difficulties are caused in the running of the college administration and it was resolved that date of superannuation for the teachers appointed before 1st October 1984 would be the date on which he attains the age of 60 years, but he may be continued till 10th November or 14th June, whichever comes earlier.

It is denied that the Vice Chancellor has no jurisdiction to change the term under proviso to Ordinance 75. In short, the defence raised by the respondent University is that the action taken by the University is quite justified and in accordance with the ordinance and the rules and regulations. Again, in exercise of the powers, State of Gujarat, passed resolution to the effect that the retirement date shall be the date on which the University ends the academic year and not the end of the vacation.

After giving our critical appraisal and analytical evaluation of the provisions of the Ordinance and the vesting of powers in the Executive Council as well as the

Vice Chancellor and also the factum that by virtue of interlocutory order granted by this Court, during the pendency of proceedings the petitioner had worked till the end of the term, in our opinion, the petitioner is entitled to salary and other incidental benefits during the extended period of service by virtue of order of this Court and therefore, respondents are obliged to pay the salary for the period. We have no hesitation in finding that the claim made by the petitioner in respect of extended period and that too by way of salary is quite just and reasonable. It is, really, very unfortunate that a merited man of literature, after having put in 35 years of service had to knock the doors of justice for extended period of job on account of interpretation of the relevant ordinances. A person who has put in such a long service and and who is a man of letter may not be given a pat on the back, but at least, would not expect a slap on the cheek while winding up long academic career. Graceful going back is always a pleasant and enjoying experience for a service or salaried person. Be that as it may. We are of the clear opinion that the petitioner is entitled to salary and incidental benefits for the extended period of service in the light of the interim order passed by this Court in favour of the petitioner and correct exposition of the provisions of the Ordinance. The petition, therefore, is liable to be allowed to the aforesaid extent.

Consequently, the petition is allowed to the aforesaid extent with costs. Rule is made absolute to the aforesaid extent.

(J.N.Bhatt, Acting CJ)

(A.L.Dave, J.)
(vjn)